

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY MAY 15 PM 4:06

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Analytical Bio-Chemistry Laboratories, Inc.
7200 East ABC Lane
Columbia, Missouri 65202

EPA ID No. MOD 046367033

Respondent.

Proceeding under Section 3008 (a) and (g) of
the Resource Conservation and Recovery Act,
as amended, 42 U.S.C. § 6928(a) and (g).

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. RCRA-07-2003-0046

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about December 30, 2002, when the United States Environmental Protection Agency, Region VII ("Complainant" or "EPA") issued a Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") to Analytical Bio-Chemistry Laboratories, Inc. Pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (hereinafter known as RCRA), Title 42 United States Code (U.S.C.), Section 6901 *et seq.*, the Complainant sought civil penalties for alleged violations of 42 U.S.C. § 6925 and 40 Code of Federal Regulations (C.F.R.), Parts 262 and 265.

The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (CAFO) is the result of such negotiations and resolves Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order.

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint.
3. For the purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint.
4. Respondent waives its right to contest any issue of fact or law set forth in the Complaint at a judicial or administrative hearing and waives its right to appeal the Final Order.
5. Respondent and Complainant agree to resolve this matter without the necessity of a formal hearing and each agree to bear their own costs and attorneys' fees.
6. Respondent and Complainant agree that, in settlement of the claims alleged in the Complaint, Respondent shall pay a civil penalty of \$76,869 as set forth in Paragraph 10 of the Final Order and Respondent shall complete the Compliance Actions set forth in Part III.B of this Consent Agreement and Final Order. Respondent consents to such civil penalty and compliance actions.
7. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region VII. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
8. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant's representative designated in Paragraph 15 of the Final Order provides Respondent with written notice, in accordance with Paragraph 24 of the Final Order, that all requirements hereunder have been satisfied.
9. Each signatory of this Consent Agreement and Final Order certifies he or she is fully authorized to enter into the terms of the Consent Agreement and Final Order.

III. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

10. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a civil penalty of \$76,869.
11. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer

of the United States" and remitted to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the Docket Number, RCRA-07-2003-0046, on the check. A copy of the check shall also be mailed to:

Alex Chen
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, KS 66101

12. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.

13. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

14. Respondent shall take the following actions within the specified time periods, and according to the terms and conditions, specified below. Respondent's satisfactory completion of these terms and conditions will satisfy Respondent's obligations under the Compliance Order in the Complaint.

- a. By June 1, 2003, Respondent shall submit photographic documentation demonstrating that the new hazardous waste storage area has adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in an emergency, as required by 40 C.F.R. § 262.34(a)(4) and 10 C.S.R. 25-5.262.
- b. By June 1, 2003, Respondent shall submit documentation demonstrating that Mark Tenink (the alternate Emergency Coordinator), Martha Pezold (who

conducts weekly inspections of the hazardous waste in the Waste Shed), and Susan Powell (who conducts weekly inspections of the hazardous waste in the Waste Shed) have received their annual training for the year 2002, as required by 40 C.F.R.

§ 262.34(a)(4) and 10 C.S.R. 25-5.262.

- c. By June 1, 2003, Respondent shall submit documentation demonstrating that the job descriptions for Mark Tenink, Martha Pezold, and Susan Powell include their hazardous waste management duties, as required by 40 C.F.R. § 262.34(a)(4) and 10 C.S.R. 25-5.262.
- d. By August 1, 2003, Respondent shall submit a copy of the facility Contingency Plan, demonstrating that it has been updated to include a description of the arrangements agreed to by Respondent and the local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, as required by 40 C.F.R. § 262.34(a)(4) and 10 C.S.R. 25-5.262.
- e. By August 1, 2003, Respondent shall submit copies of letters demonstrating that copies of the most recent facility Contingency Plan have been submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services, as required by 40 C.F.R. § 262.34(a)(4) and 10 C.S.R. 25-5.262.
- f. By June 1, 2003, Respondent shall submit a copy of manifest numbers 0153 and 0154 which show that the waste listed on the manifest was received at the designated hazardous waste facility, as required by 10 C.S.R. 25-5.262(2)(D)2.C.
- g. By August 1, 2003, Respondent shall submit a list of all solid wastes currently on-site at the facility. For each solid waste, the Respondent shall state the process which generated the waste, the amount of waste in storage, and whether the waste is a hazardous waste. If the waste is a hazardous waste, the Respondent shall list the applicable hazardous waste codes. The Respondent shall provide copies of the analytical results used to make the hazardous waste determination for each solid waste. If process knowledge was used to make the hazardous waste determination for the solid waste, the Respondent shall provide a detailed description of such process knowledge.
- h. By August 1, 2003, Respondent shall submit to EPA for approval a Sampling Plan. The purpose of this Sampling Plan is to determine the extent, if any, of contamination at the former Hazardous Waste Storage Shed (used by the company prior to June 15, 2003) and the Hazardous Waste Storage Area in

Building M (hereinafter referred to together as the "Facility"). In addition:

- i. At a minimum, the Sampling Plan shall include:
 - (1) a statement of the qualifications of the person(s) retained to conduct the work;
 - (2) a detailed cost estimate/budget for the work;
 - (3) a detailed schedule for the performance of any sampling and analyses, which shall not exceed ninety (90) calendar days from EPA's approval of the Sampling Plan;
 - (4) provisions for written notice to EPA thirty (30) calendar days prior to the week of any sampling event conducted as part of the implementation of the Sampling Plan;
 - (5) the identification of those areas to be sampled;
 - (6) a diagram of the former Hazardous Waste Storage Shed and the Hazardous Waste Storage Area in Building M and its structures, a narrative and pictorial description of the locations to be sampled, and the materials or media to be sampled;
 - (7) a Quality Assurance Project Plan (QAPP), addressing quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations" (EPA QA/R-5 (March 2001)), as well as other such applicable guidance identified by the EPA. Each QAPP shall describe the sampling procedures that will be used, shall describe the proposed sample locations, and ensure that all samples are collected and analyzed using EPA approved protocols. In addition, each QAPP shall describe the number and types of samples to be collected, the method(s) of collection and analysis, and criteria for determining sampling locations;
 - (8) a list of the hazardous constituents that each sample shall be analyzed for, based on the composition of the chemicals or the compounds listed at 40 C.F.R. Part 261, Appendix VIII (Hazardous Constituents) that were used and stored at the Facility from on-site processes;

- (9) a statement of the action levels proposed for the hazardous constituents described in paragraph (8) above, that shall indicate whether contamination from hazardous wastes stored at the former Hazardous Waste Storage Shed and the Hazardous Waste Storage Area in Building M is present;
 - (10) a statement that all samples shall be collected and analyzed in accordance with the procedures specified in the EPA document titled Test Methods For Evaluating Solid Waste, SW-846, Third Edition, November 1986 and subsequent updates; and,
 - (11) a statement that all wastes and contaminated environmental media generated during Sampling Plan implementation are subject to the hazardous waste determination requirements of 40 C.F.R. § 262.11 and will be managed accordingly.
- ii. The Sampling Plan shall outline a three-phased sampling approach. The first phase shall include a number of screening samples. If the results from the screening samples demonstrate the presence of the specified hazardous constituents in the media sampled at levels in excess of the action levels specified within the Sampling Plan, a second phase of sampling will be required, which shall include additional, expanded sampling to determine the nature and extent of the release. If the second phase of sampling indicates that a third phase is necessary, the third phase shall include the removal, decontamination, and/or remediation of hazardous constituents above the previously described action levels.
 - iii. Upon receipt of the Sampling Plan, EPA will review the Sampling Plan to determine whether it satisfies the requirements listed above. EPA will approve, disapprove, provide comments and/or modify the Sampling Plan, consistent with paragraph 17 below.
 - iv. The EPA-approved Sampling Plan, including any modifications, shall be incorporated into and become enforceable pursuant to this Consent Agreement and Final Order;
 - v. Immediately upon EPA approval of the Sampling Plan, Respondent shall implement the Sampling Plan in accordance with the schedule set forth therein;

15. Respondent shall submit all documents and other correspondence required to be submitted to EPA by this Final Order to:

Brian Mitchell
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

16. EPA shall submit any notices or correspondence related to this Consent Agreement and Final Order, if needed, to:

Jeffrey S. Vogel
Vice President & Chief Financial Officer
ABC Laboratories, Inc.
7200 E. ABC Lane
Columbia, Missouri 65202

17. EPA will review each submission of a plan by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the Parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit the plan or report to EPA. During this time, Respondent may also request in writing a meeting with EPA to discuss EPA's comments. At the end of this time, if EPA disapproves the revised submission, EPA may modify and approve the submission. In the event of such modification and approval, EPA will notify Respondent of the modification/approval and Respondent shall implement the plan as modified by EPA.

18. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times to monitor Respondent's implementation of, and compliance with, the terms of this Final Order. Nothing herein shall be construed to limit EPA's access authority under RCRA or any other law.

C. Parties Bound

19. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall notify all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein and require that such persons comply with the terms of this Consent Agreement and Final Order.

D. Reservation of Rights

20. Pursuant to 40 C.F.R. § 22.31(a), this Consent Agreement and Final Order resolves the causes of action alleged in EPA's December 30, 2002 Complaint, Docket No. RCRA-07-2003-0046. EPA reserves the right to take any enforcement action with respect to any other violations of RCRA and its implementing regulations or any other applicable law. Notwithstanding any other provision of the Consent Agreement and Final Order, EPA also reserves the right to take an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

21. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of the Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

22. Except as expressly provided herein, including the provisions of Section C of this Consent Agreement and Final Order, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

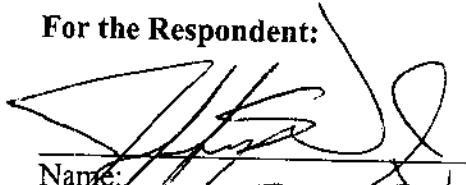
E. General Provisions

23. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

24. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order. Such written determination shall not be unreasonably withheld by EPA.

25. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.


For the Respondent:


Name: JEFFREY S. VOSS
Printed Name
Title: VICE PRESIDENT & CFO

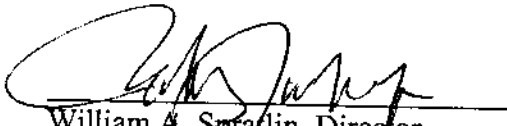
5/6/03
Date

For the Complainant:

The United States Environmental Protection Agency



Alex Chen
Assistant Regional Counsel

May 7, 2003
Date


William A. Spradlin, Director
Air, RCRA and Toxics Division

5-8-03
Date

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional
Judicial Officer.


Robert Patrick
Regional Judicial Officer

May 15, 2003
Date

IN THE MATTER OF Analytical Bio-Chemistry Laboratories, Inc., Respondent
Docket No. RCRA-07-2003-0046

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101


Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Jake Halliday
Registered Agent
Analytical Bio-Chemistry Laboratories, Inc.
7200 East ABC Lane, Box 1097
Columbia, Missouri 65202

and

Parthenia B. Evans, Esq.
Stinson Morrison Hecker LLP
2600 Grand Boulevard
Kansas City, Missouri 64108-4606

Dated: 5/16/03


Kathy Robinson
Regional Hearing Clerk